

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEBORAH HEMSTREET,

Plaintiff,

vs.

NEVADA ENERGY, INC., a Nevada
corporation,

Defendant.

2:11-CV-0108 PMP-LRL

ORDER

Before the Court for consideration is Defendant's fully briefed Motion to Dismiss (Doc. #3), filed on January 21, 2011. In Plaintiff's Opposition (Doc. #11), Plaintiff concedes that her Second Claim for Relief for Negligence Supervision, Third Claim for Relief for Intentional Inflection of Emotional Distress, and Fourth Claim for Relief for Wrongful Termination/Constructive Discharge should be dismissed, but without prejudice. In Defendant's Reply Memorandum (Doc. #13), Defendant insists that each of the foregoing tort claims are subject to dismissal with prejudice because they are preempted by NRS 613.330. The Court agrees.

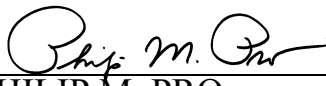
Plaintiff characterizes her first claim for relief alleging violations of gender discrimination under Title VII of the Civil Rights Act of 1964, and Age Discrimination under the Age Discrimination Employment Act. While Plaintiff is undoubtedly attempting to state such claims, the Court concurs with Defendant that her Complaint fails to articulate sufficient facts to state claims for relief that are

1 plausible on their face as required by the United States Supreme Court in Bell
2 Atlantic Corp. V. Twombly, 550 U.S. 544, 570 (2007), and Ashcroft v. Iqbal, 129
3 S.Ct. 1937 (2009). The Court finds, however, that dismissal of Plaintiff's First
4 Claim for Relief should be without prejudice, and that Plaintiff should be permitted a
5 reasonable time within which to amend her Complaint to set forth sufficient claims
6 for gender discrimination and/or age discrimination, if she can do so.

7 **IT IS THEREFORE ORDERED that** Defendant Nevada Energy's
8 Motion to Dismiss Plaintiff's First Claim for Relief for violation under Title VII of
9 the Civil Rights Act of 1964, and Age Discrimination under the Age Discrimination
10 Employment Act and that Plaintiff's First Claim for Relief is hereby **DISMISSED**
11 **without** prejudice. Plaintiff shall have to and including **March 16, 2011**, within
12 which to file an Amended Complaint sufficiently alleging the foregoing claims.

13 **IT IS FURTHER ORDERED that** Defendant's Motion to Dismiss (Doc.
14 #3) is **GRANTED** with respect to Plaintiff's Second, Third and Fourth Claims for
15 relief, and that such claims are hereby **DISMISSED** with prejudice.

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17 DATED: February 14, 2011.

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20 PHILIP M. PRO
21 United States District Judge
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